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IN THE HIGH COURT OF JUDICATURE AT BOMBAY@@
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CRIMINAL APPELLATE JURISDICTION.@@
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CRIMINAL APPEAL NO.48 OF 2001.@@
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Ms.Stella Ndagire : Appellant.
versus.
Shri A.J.Isaac, Inspector of
Customs & Anr. : Respondents.

None for the appellant.
Mr.P.S.Thakur, Spl.PP. for the CBI.
Mr.K.V.Saste, APP, for the State.

CORAM : D.G.DESHPANDE,J.@@
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DATED : 24th August 2004.@@
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JUDGMENT.@@
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1.‰ This matter was on board on 19th August 2004 when advocate Mr.M.P.Tiwari for the accused was present. He commenced his argument and thereafter the matter was adjourned to 23.08.2004. On that date i.e. on 23.08.2004 nobody appeared for the appellant. I heard the Mr.Thakur, Spl.PP for the CBI and the matter was kept today so that Advocate Mr.Tiwari can give reply and argue the case on behalf of the accused. However, Mr.Tiwari is not present and, therefore, on the basis of the judgment of the Supreme Court reported in 1996 Cri.L.J.3491 (Bani@@
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Singh and others v. State of U.P.) I am@@
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disposing of this appeal on merits.

2.‰ The accused is Ugandan national lady. She has been convicted by the Special Judge, Greater Bombay, under Section 29 of the NDPS Act and sentenced to suffer R.I. for a period of 12 years and to pay a fine of Rs.Two lacs in default further R.I. for one year; under Section 21 to suffer R.I. for a period of 12 years and to pay a fine of Rs.Two lacs in default further R.I.

for one year; and under Section 28 read with Section 23 Act to suffer R.I. for a period of 12 years and to pay a fine of Rs.Two lacs in default further R.I. for one year. All the substantive sentences to run concurrently.

3.‰ The case of the prosecution was that on 18.11.1997 the accused was in the process of boarding Ethiopian Airlines Flight No.ET-661 ETD 0800 hours bound for Entebbe via Addis Ababa at Sahar Air Port, Mumbai. One checked-in piece of baggage was indicated on the Air-ticket and the boarding pass of the accused. However, no baggage-claim-tag was found on the air-ticket. The accused could not explain the missing claim-tag on her ticket. On enquiry, it was confirmed that the accused had checked-in one piece of baggage. Therefore, a duplicate copy of the claim-tag was taken out from computer and supplied to the officers for further investigation. At the very time the Prime Minister of Burundi and his entourage were going on by the same flight. Ethiopian Airlines informed the customs officers that they were not in a position to delay the flight beyond the schedule time and assured the customs officers to get back the checked-in piece of baggage of the accused by next flight. Accordingly Ethiopian Airlines were requested to retrieve the checked-in baggage of the accused by their letter dated 18.11.1997. On 19.11.1997 package bearing identification tag and rush tag arrived at Sahar Airport, Mumbai by Ethiopian Flight No.630. Panchas and accused were kept present at that time and the accused identified the said package as her checked-in baggage boarded on Ethiopian Airlines Flight No.661 ETD 0800 dated 18.11.1997. The baggage identification tag found on the said package tallied with the name of the accused and also tallied with other material particulars. A search of the package was made in presence of the panchas. Five packets containing brown powder were found. It tested positive for heroin and total quantity of 5.552 kgs. of brown powder was found.

4.‰ 3 samples, each weighing 5 grams were duly drawn from the composite mixture of small quantities of the powder drawn from each of the 6 polybags. The samples were duly packed and sealed in the presence of panchas, accused and ground staff and the seizing officer. Detailed panchnama was prepared. Remaining brown powder was also separately packed, sealed and labelled.

5.‰ On 18.11.1997 the accused was examined under Section 67 of the NDPS Act so also on 20.11.1997 wherein she gave certain particulars as to how she got the heroin. The statement given by her on 18.11.1997 was subsequently modified and changed by the accused on her own accord. But the substance remained in the same.

The samples were sent to the CA and all were found containing Heroin and attracted the provisions of NDPS Act and the accused was then tried before the trial Court.

6.‰ The defence of the accused, firstly, was of total denial and secondly was that there was no connection or link between her baggage sent on 18.11.1997 and the baggage received by Ethiopian Airlines on 19.11.1997.

7.‰ As I have already noted that Advocate Mr.Tiwari was absent on two dates, but, however, he was present on 19.08.2004. He had just commenced his argument and he had to make submissions attacking the judgment of the trial Court.

8.‰ In this background of the matter, the@@ AAAAAAAA
learned Spl.PP contended that the defence of total denial of the accused is of no use because of the voluminous and overwhelming evidence of the prosecution. All the aspects of the matter, that the accused was travelling by Ethiopian Airlines Flight No.ET-661 ETD 0800 hours on 18.11.1997; that at that time the Prime Minister of Burundi was passing on by the said flight; that the accused had one baggage which was sent on the flight, but the baggage-claim-tag was missing on her air-ticket; that the accused could not explain the missing claim-tag; that a request was made to the Ethiopian Airlines to send back the baggage of the accused by a letter dated 18.11.1997 and that on 19.11.1997 Ethiopian Airlines sent back the package of the accused and that it was identified the accused in presence of the panchas; that it was tallied with the baggage identification tag and other material particulars, are proved beyond reasonable doubt.

9.‰ Mr.Thakur, appearing for the CBI, drew my attention to the evidence of PW.7 Narendra Kotian who is the most important witness for establishing the connection between the baggage sent on the Ethiopian Airlines on 18.11.1997 and baggage received by Ethiopian Airlines at Sahar Air Port, Mumbai on 19.11.1997. This witness PW.7 was the Junior Transportation Agent, Ethiopian airlines posted at Sahar Airport, Mumbai. He was on duty at about 1500 hrs. on 19.11.1997 and he has stated that PW.1 Bichu called him and Mr.Rahul Mohini his colleague at the arrival area around 2030 hrs. He called them to witness the baggage of the accused which was over-carried on 18.11.1997. This baggage of the accused came back to Sahar Airport by Ethiopian Airlines Flight No.630 ETD 2030 hrs. At that time the accused was present. She identified the baggage in presence of the panchas and others. Thereafter the baggage was taken off from the belt and taken to AIU office at the airport. The

baggage was opened; two cartons were found inside and brown powder was taken out from 6 polybags. The brown powder was tested. It was found to contain heroin. Samples were taken and passport, boarding card, flight coupon, passenger manifest of the accused were shown. A detailed panchanama Exhibit 17 was prepared and it was signed by PW.7; other panch witness and officers present. He (PW.7) identified all the documents viz. passport of the accused (Exh.18); airticket (Ex.17); boarding pass (Exh.20). He also identified the tags of the baggage which are most important piece of evidence to connect the package received by Ethiopian Airlines on 19.11.1997. Exhibit 23 Cl. was shown to the witness. It was Air-India tag bearing markings EBB-ETB 21/18 Nov. ET 253288 and also having markings ADD ET611/18 Nov. ET 253288. He has stated that ET 253288 is the original tag of the date of despatch and the other tag bearing marking Rush is the rush tag of the date of return which were on the baggage identified by the accused. He also stated that he can uplifted flight coupon in respect of airticket of the accused Ex.19. He also identified passenger manifest marked X-1 of the Ethiopian Airline Flight by which accused was to go abroad. Even in spite of searching cross examination nothing is brought on record to create suspicion about the evidence given by this witness. He also identified all the articles shown to him including gunny bag, cartons, box from which six bed-sheets with contraband articles were found and also the garments. In cross examination he has admitted that all checked-in-baggage is required to be locked and baggage in the form of cartons is also accepted by the airline. To the question in cross examination, this witness stated that it was not true that the captain of the aircraft bringing the baggage is required to submit list of the incoming baggage at the airport and also there is no list of incoming baggage. It appears that attempt of the accused by putting such question was to show that baggage that brought was back was not of the accused. The witness has withstood the cross examination successfully.

10.‰ My attention was further drawn by the learned Spl.PP to the evidence of P.W.1 - Gurunath Vishwanath Bichu who is Intelligence Officer. He has given his evidence as to finding of the accused on air port; about her flight for which she has booked ticket; about addressing letter to Ethiopian Airlines and about preparing panchanama. His role is mainly about happenings on 19.11.1997. He, therefore, fully supported the evidence of P.W.7. He has identified all the necessary documents and panchanama (Exhibit 17); the articles seized and recovery form the said cartons which was brought back by Ethiopian Air

Lines.

11.‰ So far as the prosecution case is concerned, what happened on 19.11.1997 is more important and only thing that was happened on 18.11.1997 was detention of the accused; finding that her air ticket did not have baggage-claim-tag for the checked-in-baggage which was sent on 18.11.1997 by Ethiopian Air Lines and it could not be retrieved as Ethiopian Air Lines did not want to delay the flight as the Prime Minister of Burundi was travelling by the said flight. P.W.2 - Mr.N.Meyyappan is other witness for the prosecution. He was the Superintendent N-Cell, Custom (P) Mumbai. He was gazetted officer. He has stated about happenings on 18.11.1997; intercepting the accused while performing his duty to the Ethiopian Airlines Flight No.ET 611 ETD 8.00 a.m.; questioning the accused about checked-in-baggage which revealed that her ticket and boarding pass indicated that she had passed one checked-in-baggage, but her ticket did not carry baggage claim tag. He stated that upon inquiry, they confirmed that the accused had one piece of checked-in-baggage, then he obtained one duplicate copy of the baggage claim tag and, has stated how and why the baggage of the accused could not be retrieved on the same day. He stated about the letter of immigration vide Exhibit 21 about recording the statement of the accused on 18.11.1997. He was also present when the baggage was brought back by the Ethiopian Air Lines on 19.11.1997. He has corroborated the evidence of P.W.7 in that regard fully and completely.

12.‰ P.W.3 - Albert Johan Issac is the Inspector, N-Cell Customs (P). He has stated about arrest of the accused, her custody etc. He has sent the samples to the C.A. He has also produced Test Report (Exh.36). The next witness is P.W.4 - Mr.Palanivel. He is also Intelligence Officer, N-Cell, Customs (P). He has deposited the articles in the Customs godown at Churchgate. P.W.5 is Mrs.L.U.Menon who is a formal witness. P.W.6 is Mr.Boricha - the Intelligence Officer, N-Cell, Customs (P) Mumbai who questioned the accused in English in presence of Mrs.Menon- the lady officer. He has identified and prove the statement of the accused. P.W.8 is Kelth John Sanchis.

13.‰ The evidence of these witnesses is@@ AAAAAAAA
sufficient to conclusively prove the guilt of the accused. The trial Court has rightly accepted the case of the prosecution and convicted the accused. Therefore, there is no merit in this appeal. However, the total sentence imposed upon the accused is of 36 years i.e. R.I. for 12 years each under three sections. All substantive sentences are to run concurrently. The trial

court also imposed fine of Rs.Two lacs on each count and in default sentence of one year each. That appears to be rather heavy looking to the substantive sentence awarded. Hence I pass the following order :-

:ORDER:

1.‰ The appeal is partly allowed.

2.‰ The conviction of the accused under Sections 29, 21 and 28 r/w 23 of the N.D.P.S. Act and the substantive sentence of 12 years each imposed upon her under three sections is maintained. However, her fine of Rs.Two lacs on each count is reduced to Rs.One lac on each count and in default of fine she will have to undergo RI for one year on each count. It is clarified that if the accused does not pay the fine amount of Rs.three lacs, she will have to undergo R.I. for three years.

[D.G.DESHPANDE]
24/08/2004 JUDGE.

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